

order to expedite application processing, minimize referrals to OGC, and resolve problems which may arise.

§ 1942.5 Application review and approval.

(a) *Procedures for review.* Ordinarily FmHA or its successor agency under Public Law 103-354 staff review will proceed as applications are being developed. An overall review of the applicant's financial status, including a review of all assets and liabilities, will be a part of the docket review process by the staff and approval officials. The engineering/architect reports and associated data are to be reviewed by the FmHA or its successor agency under Public Law 103-354 staff engineer or architect, as appropriate, as soon as available but prior to the District Director's completion of the project summary. During the review the District Director in all cases will make certain that no low income or minority community within the service area has been omitted or discouraged from participating in the proposed project. The District Director will also determine how the service area was defined to assure that gerrymandering of specific communities or areas has not occurred. The findings should be documented in the running record. Prior to presenting the assembled application to the approval official, the assembled application ordinarily will be processed in the following sequence:

(1) The Rural Development manager will complete the project summary, including written analysis and recommendations, and will prepare a draft letter of conditions listing all the requirements that the applicant must agree to meet within a specific time.

(i) Requirements listed in letters of conditions will include the following unless inappropriate due to the particular type of funding or entity involved: Maximum amount of loan and/or grant which may be considered, scheduling of payments, term of loan and any deferment of principal which may be allowed, reserve requirements, compliance with section 504 of the Rehabilitation Act of 1973, number of users (members) and verification required, contributions rates and charges, interim financing, disburse-

ment of funds, security requirements, graduation requirements, debt collection policies execution of Form FmHA or its successor agency under Public Law 103-354 1910-11, "Application Certification, Federal Collection Policies for Consumer or Commercial Debts," organization, business operations, insurance and bonding (including applicant/borrower and contractor), construction contract documents and bidding, accounts, records, and audit reports required (including requirements of OMB Circulars A-128 and A-110), adoption of Form FmHA or its successor agency under Public Law 103-354 1942-47, "Loan Resolution (Public Resolution)," for public bodies or Form FmHA or its successor agency under Public Law 103-354 1942-9, "Loan Resolution (Security Agreement)," for other than public bodies, closing instructions, and other requirements.

(ii) Each letter of conditions will contain the following paragraphs:

This letter establishes conditions which must be understood and agreed to by you before further consideration may be given to the application. Any changes in the project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA or its successor agency under Public Law 103-354 by written amendment to this letter. Any changes not approved by FmHA or its successor agency under Public Law 103-354 shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed \$_____.

If FmHA or its successor agency under Public Law 103-354 makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to FmHA or its successor agency under Public Law 103-354 as soon as practical. In order to avoid possible delays in loan closing such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Please complete and return the attached Form FmHA or its successor agency under Public Law 103-354 1942-46, "Letter of Intent to Meet Conditions," if you desire that further consideration be given your application.

(iii) Rural Development Managers may add the following:

If the conditions set forth in this letter are not met within _____ days from the date hereof, FmHA or its successor agency under Public Law 103-354 reserves the right to discontinue the processing of the application.

(2) The State staff engineer or architect, as appropriate, will include a written analysis and recommendations on the project summary.

(3) The Chief, Community Programs or Community and Business Programs, will review the assembled application and include in the project summary a written analysis and recommendations, including the availability of other credit and other eligibility determinations. The draft letter of conditions will be reviewed and any necessary modifications made.

(b) *Project requiring National Office review.* Prior National Office review is required for certain proposals (See subpart A of part 1901 of this chapter).

(1) The Rural Development Manager should assemble applications for the National Office review in the following order from top to bottom and forward them to the State Director for review and recommendation prior to submission to the National Office:

(i) Transmittal memorandum including:

- (A) Recommendation.
- (B) Date of expected obligation.
- (C) Any unusual circumstances.

(ii) Copies of the following:

- (A) Proposed letter of conditions.
- (B) Applicable State Intergovernmental review comments (FmHA Instruction 1940-J, available in any FmHA or its successor agency under Public Law 103-354 office).
- (C) Community Facilities Project Summary.
- (D) Preliminary architectural or engineering report.
- (E) Form FmHA or its successor agency under Public Law 103-354 442-3, "Balance Sheet," or a financial statement or audit that includes a balance sheet.

(F) For other essential community facility loan applicants whose proposals do not meet the assured income or tax based security requirements of § 1942.17 (g)(2)(iii) and (g)(3)(iii) of this subpart, financial information for the last five years of operation will be submitted if available. The type of financial information to be submitted should be determined based on what is available and the following order of preference:

(1) Complete audits;

(2) Unaudited financial statements including balance sheets and statements of income and expenses;

(3) Lists of income and expenses.

(G) For other essential community facility loans secured under paragraph (b)(1)(ii)(F) of this section, submit a detailed explanation of the proposed security; evidence that the application cannot be processed and the loan secured under paragraph (b)(1)(ii)(F) of this section; evidence supporting the efforts by the applicant in persuading appropriate public bodies to provide the proposed facility and services and the results, and comments of the Regional Attorney concurring in the applicants' legal authority to give the proposed security.

(H) Financial Feasibility Report when required by § 1942.17 (h)(1).

(I) Proposed lease agreements, management agreements, or other agreements when facility management will be provided by other than the applicant.

(J) Other forms and documents on which there are specific questions.

(K) Environmental impact analysis and documentation.

(2) For applications to be reviewed in the State or field, at least those items in paragraph (b)(1)(ii) of this section, should be available.

(c) *For all applications.* All letters of conditions will be addressed to the applicant, signed by the Rural Development Manager or other Agency representative designated by the State Director, and delivered to the applicant. Upon signing the letter of conditions, the Rural Development Manager will send two copies of the letter of conditions and two copies of the project summary to the State Director. The State Director will immediately send

one copy of the project summary and a copy of the letter of conditions to the National Office, Attention: Community Programs. The Rural Development Manager, with assistance as needed from the State Office, will discuss the requirements of the letter of conditions with the applicant's representatives and afford them an opportunity to execute Form RD 1942-46.

(1) The letter of conditions should not ordinarily be issued unless the State Director expects to have adequate funds in the State allocation to fund the project within the next 12 months based on historic allocations or other reliable projections.

(2) If the applicant declines to execute Form FmHA or its successor agency under Public Law 103-354 1942-46, the Rural Development Manager will immediately notify the State Director and provide complete information as to the reasons for such declination.

(3) If the applicant accepts the letter of conditions, the Rural Development Manager will forward the executed Form RD 1942-46 and a signed and an unsigned copy of Form RD 1940-1 to the State Director.

(d) *Loan approval and obligating funds.* Loans will be approved under this subpart and subpart A of part 1901 of this chapter (available in any FmHA or its successor agency under Public Law 103-354 office). The loan will be considered approved on the date the signed copy of Form FmHA or its successor agency under Public Law 103-354 1940-1 is mailed to the applicant. The State Director or designee may request an obligation of funds when available within their State allocation and according to the following:

(1) Form FmHA or its successor agency under Public Law 103-354 1940-1, authorizing funds to be reserved, may be executed by the loan approval official providing the applicant has the legal authority to contract for a loan and to enter into required agreements and has signed Form FmHA or its successor agency under Public Law 103-354 1940-1.

(2) If approval was concurred in by the National Office, a copy of the concurring memorandum will be attached to the original of Form FmHA or its successor agency under Public Law 103-354 1940-1.

(3) The State Director or designee will request an obligation of loan and/or grant funds via the FmHA or its successor agency under Public Law 103-354 Field Office terminal system after signing Form FmHA or its successor agency under Public Law 103-354 1940-1. The requesting official will furnish security identification as necessary. The requesting official will record the date, time of request, and their initials on the original Form FmHA or its successor agency under Public Law 103-354 1940-1.

(4) The obligation date and date the applicant is notified of loan and/or grant approval is six working days from the date funds are reserved unless an exception is granted by the National Office.

(5) Immediately after verifying that funds have been reserved, utilizing the FmHA or its successor agency under Public Law 103-354 Field Office terminal system status inquiry function, the State Director or designee will notify by telephone, the Legislative Affairs and Public Information Staff in the National Office as required by FmHA Instruction 2015-C, "Announcement of Approval of Loans, Grants, or Guaranteed Loans for Rural Project," (available in any FmHA or its successor agency under Public Law 103-354 State Office).

(6) Loan approval and applicant notification will be accomplished by the State Director or designee by mailing to the applicant on the obligation date a copy of Form FmHA or its successor agency under Public Law 103-354 1940-1 which has been previously signed by the applicant and loan approval official. The date the applicant is notified is also the date the interest rate at loan approval is established. The State Director or designee will record the date of applicant notification and the interest rate in effect at that time on the original of Form FmHA or its successor agency under Public Law 103-354 1940-1 and include it as a permanent part of the District Director project file with a copy placed in the State Office file.

(7) If a transfer of obligation of funds is necessary, complete Form FmHA or its successor agency under Public Law 103-354 450-10, "Advice of Borrower's

Change of Address, Name, Case Number, or Loan Number," and process via the FmHA or its successor agency under Public Law 103-354 Field Office terminal system. An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

- (i) The substituted applicant is eligible to receive the assistance approved for the original applicant; and
- (ii) The substituted applicant bears a close and genuine relationship to the original applicant (such as two organizations that are controlled by the same individuals); and
- (iii) The need for and scope of the project and the purpose(s) for which FmHA or its successor agency under Public Law 103-354 funds will be used remain substantially unchanged.

[50 FR 7296, Feb. 22, 1985, as amended at 50 FR 33332, Aug. 19, 1985; 50 FR 43378, Oct. 25, 1985; 53 FR 6787, Mar. 3, 1988; 54 FR 47196-47197, Nov. 13, 1989; 63 FR 16089, Apr. 2, 1998; 67 FR 60584, Sept. 27, 2002; 67 FR 63019, Oct. 9, 2002]

§ 1942.6 Preparation for loan closing.

(a) *Obtaining closing instructions.* Completed dockets will be reviewed by the State Director. The information required by OGC will be transmitted to OGC with a request for closing instructions. Upon receipt of the closing instructions from OGC, the State Director will forward them along with any appropriate instructions to the District Director. Upon receipt of closing instructions, the District Director will discuss with the applicant and its architect or engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing.

(b) *Verification of users and other funds.* (1) In connection with a loan for a utility type project to be secured by a pledge of user fees or revenues, the District Director will authenticate the number of users prior to loan closing or the commencement of construction, whichever occurs first. Such individual will review each signed user agreement and check evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there

will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system. The District Director will record the determination in a memorandum to the State Director.

(2) In all cases the availability and amounts of other funds to be used in the project will be verified by FmHA or its successor agency under Public Law 103-354.

(c) *Initial compliance review.* An initial compliance review should be completed under subpart E of part 1901 of this chapter.

(d) *Ordering loan checks.* Checks will not be ordered until:

(1) The applicant has complied with approval conditions and closing instructions, except for those actions which are to be completed on the date of loan closing or subsequent thereto; and

(2) The applicant is ready to start construction or funds are needed to pay interim financing obligations.

(e) *Multiple advances of FmHA or its successor agency under Public Law 103-354 funds.* When FmHA or its successor agency under Public Law 103-354 provides loan funds during the construction period using interim (temporary) instruments described in § 1942.19(g) of this subpart, the following action will be taken prior to the issuance of the permanent instruments:

(1) The Finance Office will be notified of the anticipated date for retirement of the interim instruments and issuance of permanent instruments of debt.

(2) The Finance Office will prepare a statement of account including accrued interest through the proposed date of retirement and also show the daily interest accrual. The statement of account and the interim financing instruments will be forwarded to the District Director.

(3) The District Director will collect interest through the actual date of the retirement and obtain the permanent instrument(s) of debt in exchange for the interim financing instruments. The permanent instruments and the cash collection will be forwarded to the Finance Office immediately, except that